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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,889	03/15/2004	Antonio Forte	379/1/021	1495

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EXAMINER

TRAN, HANH VAN

ART UNIT PAPER NUMBER

3637

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/800,889

Applicant(s)

FORTE, ANTONIO

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/15/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This is the First Office Action on the Merits from the examiner in charge of this application.

#### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Objections***

3. Claims 12-25 are objected to because of the following informalities: in the claims, line 1, "Shelving" should be "A shelving". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 12-14, 20-21, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 3,938,666 to Castleberry.

Castleberry discloses a shelving to hold pizza cartons, comprising a single body including a plurality of adjacent carton stacking zones, the single body including side and rear walls providing an enclosure which is open at a frontal zone, a bottom wall and a cover, the frontal zone having L-shaped frontal profiling elements 58 and T-shaped profiling elements 40 which contain cartons in the stacking zones, the L-shaped and T-shaped profiling elements each having

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a lower part which is cut away to create an extraction space for a lowermost carton from a stack of cartons in the enclosure element, while upper cartons stacked thereon move down at each removal of the lowermost carton and remain neatly stacked, wherein the shelving is comprised of a plurality of stacking zones placed near one another, fixed feet 52, such as shown in Fig 1, secured at the bottom wall. In regard to claim 20, the table is considered to be the counter mentioned in the disclosure.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 15-16, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castleberry in view of USP 4,597,614 to Alexander.

Castleberry discloses all the elements as discussed above except for (1) the frontal L-shaped profiling elements and T-shaped profiling elements further including recesses in a central

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zone thereof, in addition to the cut away lower portions, and (2) further comprising a front protection wall which is transparent, and at least one of the walls and the cover is transparent.

Alexander teaches the idea of a storage/dispenser rack for rectangular articles comprising a lower part with cutout portions to create an extraction space, and further including recesses in a central zone thereof in order to facilitate removal of a central article, when so desired, wherein a front protection wall/cover is transparent in order to facilitate viewing of articles stored therein. Therefore, it would have been obvious to modify the structure of Castleberry by providing (1) the frontal L-shaped profiling elements and T-shaped profiling elements further including recesses in a central zone thereof, in addition to the cut away lower portions, in order to facilitate removal of a central article, when so desired, and (2) a front protection wall which is transparent, and at least one of the walls and the cover is transparent in order to facilitate viewing of articles stored therein, as taught by Alexander, since both teach alternate conventional storage/dispenser rack for rectangular articles, used for the same intended purpose of storing articles, thereby providing structure as claimed.

9. Claims 17-18, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castleberry, as modified, as applied to claim 16 above, and further in view of USP 5,447,366 to Cole.

Castleberry, as modified, discloses all the elements as discussed above except for either a fixed or removable partition placed at a position lower than the recesses in the central zone, and casters secured at the bottom wall.

Cole teaches the idea of providing a storage/dispenser housing comprising a plurality of either fixed or removable partitions 30 placed within the housing at various heights for the

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purpose of subdivided the interior into smaller section, and casters secured at the bottom wall in order to facilitate movement of the housing. Therefore, it would have been obvious to modify the structure of Castleberry, as modified, by providing either a fixed or removable partition placed at a position lower than the recesses in the central zone for the purpose of subdivided the interior into smaller section, and casters secured at the bottom wall in order to facilitate movement of the housing, as taught by Cole, since both teach alternate conventional storage/dispenser housing structure, used for the same intended purpose of storing articles, thereby providing structure as claimed.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castleberry in view of USP 4,706,845 to Schnurer et al.

Castleberry discloses all the elements as discussed above except for a cupboard below the carton stacking zones.

Schnurer et al teaches the idea of providing a cupboard below the stacking zones in order to provide easy access to storing of articles. Therefore, it would have been obvious to modify the structure of Castleberry by providing a cupboard below the stacking zones in order to provide easy access to storing of articles, as taught by Schnurer et al, since both teach alternate conventional storage/dispenser housing structure, used for the same intended purpose of storing articles, thereby providing structure as claimed.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hlade et al, Jo, French et al, Hennig, Crosslen, Jaquish, Harvey, and Ishimoto all show structures similar to various elements of applicant's disclosure.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Hanh V. Tran**  
**Art Unit 3637**

HVT

June 26, 2005